

Exhibit 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

MICHAEL BAZZREA, et al.,	:	
	:	
<i>Plaintiffs,</i>	:	
	:	
v.	:	Case No.: 3:22-cv-265
	:	
ALEJANDRO MAYORKAS, et al.,	:	
	:	
<i>Defendants.</i>	:	
	:	

DECLARATION OF LIEUTENANT COMMANDER JOEL A. ABER

I, LIEUTENANT COMMANDER JOEL A. ABER, hereby declare and state:

1. I am a reserve commissioned officer serving on active duty in the United States Coast Guard. I have served in the Coast Guard for 18 years. I was recalled to active duty on January 1, 2022 to serve as the COVID-19 Crisis Action Team Support Cell Leader and assumed my current assignment as the COVID-19 Crisis Action Team Leader upon the retirement of CAPT Timothy Buchanan, the previous Team Leader, in June 2022. My prior Coast Guard assignments have included Shoreside Security and Tactical Action Officer at Port Security Unit 308, Integrator at Force Readiness Command, Direct Action Section Team Leader and Precision Marksman Division Chief at Maritime Security Response Team East, Deployable Team Leader and Instructor at the International Training Division of Training Center Yorktown, and Homeland Security Liaison at Group Galveston. I am generally aware of the allegations set forth in the pleadings filed in this matter and make this declaration in my official capacity, based upon my personal knowledge and upon information that has been provided to me in the course of my official duties.

2. The COVID Crisis Action Team was established in March of 2020 as a cross-

functional team consisting of approximately 30 work groups responsible for the rapid coordination of Coast Guard wide policy and direction in response to the SARS-COV-2 world wide pandemic. The team reports directly to the Coast Guard Deputy Commandants for Mission Support and Operations, with direct liaison authorization to Coast Guard Areas, Districts, and Field units in managing the daily Coast Guard pandemic response. The team's areas of emphasis are safety, efficiently sustaining Coast Guard operations and mission support, and directly supporting the American public.

3. The Coast Guard is one of our nation's military services and, in addition to defense operations, has eleven statutory missions: marine safety; search and rescue; aids to navigation; living marine resources; marine environmental protection; ice operations; ports, waterways and coastal security; drug interdiction; migrant interdiction; and other law enforcement.¹ On an average day, the Coast Guard will, amongst other things, conduct 45 search and rescue mission saving 10 lives and over \$1.2 million in property; investigate 35 pollution incidents; screen 360 merchant vessels for potential security threats prior to arrival in U.S. ports; conduct 105 marine inspections of vessels; and investigate 14 marine casualties while facilitating the movement of \$8.7 billion worth of goods and commodities through the Nation's Maritime Transportation System.² Coast Guard members serve in their local communities throughout the Continental United States, Alaska, Hawaii, and United States territories stretching from Guam to the Virgin Islands. Coast Guard members are assigned to foreign countries ranging from China to Europe and Coast Guard cutters routinely engage in migrant and drug interdiction operations in to the Caribbean and the Eastern Pacific; in fisheries conservation boardings in the Atlantic, the Gulf of Mexico, and the Bering Sea; in support of defense operations with the Navy or allied naval forces

¹ 6 U.S.C. § 468.

² [United States Coast Guard > Values Video \(uscg.mil\)](http://United States Coast Guard > Values Video (uscg.mil))

in the Western Pacific and Indian Oceans; and icebreaking operations in the Arctic and Antarctica.

4. To perform these missions, Coast Guard personnel consistently find themselves in close proximity to both each other and members of the public. Vessel boardings for law enforcement operations, migrant interdictions, marine inspection of commercial vessels, oil spill clean up operations, and rescue operations all routinely bring Coast Guard members into close personal contact with members of the public without the opportunity to socially distance themselves or screen them for vaccination status. Coast Guard members aboard cutters, small boats, and aircraft must work in close proximity to each other. Members aboard cutters are required to share berthing areas with just a few feet between tiered racks and to share shower and toilet facilities. Even members assigned to shore duties may be assigned to standing watch in command centers for lengthy shifts without the ability to social distance, and boat crews must sleep and eat aboard their small boat stations in order to be ready to respond to search and rescue missions. Coast Guard operations are not compatible with physical distancing, isolation, and quarantine measures that have been used to combat COVID-19.

5. In addition to these regular round-the-clock operations, Coast Guard members must also be ready to provide personnel for short-fuse deployments and no-notice temporary duty assignments to execute its own authorities and to assist other agencies. For example, in Fiscal Year 2021, the Coast Guard deployed 4,461 members (both active duty and reserve) in response to surge staffing operations, including Hurricane Ida, Operation Allies Welcome, the California Pipeline oil spill, M/V *Golden Ray* capsizing, the Haitian earthquake, and Southwest Border migrant operations. That number accounts for over 10% of the Coast Guard's total military end strength. The majority of the personnel who are assigned to respond to the domestic emergencies are assigned from non-operational billets, as those members assigned to operational assets are

deemed to be critical to the execution of that asset's mission. Mitigation measures short of full vaccination, like testing and social distancing, cannot be implemented during these deployments and temporary duty assignments because of the nature of the operational environment and the often austere and arduous situations in which the members operate.

6. To fulfill these emergency deployments, active duty Coast Guard members may only receive hours' notice prior to their departure for international or domestic deployments. Coast Guard reservists also may receive little advance notice. In the case of involuntary recall under 14 U.S.C. § 3713, a member of the Coast Guard Reserve is given only "a reasonable time" between notice and date of activation. The standard period is "at least two days" but that can be shorter if the Secretary determines the domestic emergency does not allow for the full two-day period.³ Because of the mission-critical need to get members onto the scene of domestic emergencies as fast as possible, the Coast Guard's surge staffing office seeks to achieve a two- to three-day turnaround time between receipt of request for surge staffing and the arrival of the member on-scene. It is also not possible for the Coast Guard to allow members to remain unvaccinated until they are ordered to respond to a domestic emergency or contingency operation because three to four weeks are required between the first and second doses of the vaccine.⁴ If the Coast Guard allows temporary deferment of vaccination until notice of deployment or temporary duty assignment, then the member will be unable to execute those orders in a timely manner. Therefore, Coast Guard members must be vaccinated in advance of any deployment notification to ensure the Coast Guard is able to fulfill its ongoing and foreseeable future responsibilities to respond to domestic emergencies and crises. No other alternative is adequate to ensure the successful and

³ 14 U.S.C. § 3713(b).

⁴ <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/stay-up-to-date.html#recommendations>, last accessed August 29, 2022.

safe deployment of the Coast Guard's forces in response to our Nation's emergencies.

7. As of August 30, 2022, a total of 8,179 Coast Guard members have been infected with COVID-19 from a current total force of 40,757 active duty members and 6,240 reservists. Coast Guard units are often small in size such that even a small number of cases can render a unit incapable of performing its mission. As an illustrative example, Sector Houston-Galveston is part of the Eight Coast Guard District, which is responsible for most of the Gulf of Mexico coastline as well as the inland waterways of the Mississippi, Ohio, Missouri, Illinois, and Tennessee River systems. Thirty-nine separate units in District Eight were rendered Not Mission Capable (NMC) due to COVID-19 at least once, eleven units were NMC more than once. Included in this total is the Coast Guard Cutter MALLET, a 75' inland construction tender, has been rendered NMC by COVID-19 three times leaving it out of operation for a total of 33 days. MALLET is responsible for maintaining and repairing 1,328 floating and fixed Aids to Navigation and is also called upon at times to complete construction projects and occasionally salvage operations. Aids to navigation are vital to safe maritime commerce. If MALLET is not able to service its aids, those aids may be off station, not lit, or missing entirely, thereby increasing the possibility that commercial vessels may round aground and possibly result in an oil spill. Also included in this total was the cutter KANKAKEE, another 75' inland construction tender, which was NMC three times for a total of 26 days.

8. By the end of October 2021, across the Coast Guard, 133 units were NMC at least once due to COVID-19. These units ranged in size from several small Aids to Navigation Teams to the 418' National Security Cutter STRATTON, which had to end a seven week counter-narcotics patrol just two weeks into a planned seven-week patrol after 11 crew members tested positive for COVID-19 despite all crew members undergoing a period of self-quarantine and

passing two coronavirus tests prior to getting underway.

9. . The worst impacts to Coast Guard readiness came in the fall of 2020, prior to the availability of vaccines. The peak impact occurred from November 9 through 19, 2020, during which time period between ten and fourteen Coast Guard units were NMC every day. Starting in March 2021, as Coast Guard members started to receive their second vaccination shots, readiness improved dramatically. While the numbers of NMC units rose during the COVID-19 Delta variant wave, they peaked at August 4, 2021, at seven NMC units. As the number of Coast Guard members who are fully vaccinated has risen, availability improved. During the months of September and October 2021, just ten Coast Guard units were in a NMC or partially mission capable (PMC) status. Of those ten units, only one had a fully vaccinated crew. This status largely continued for two months through December 25, 2021. On most days no NMC units were reported and on no day was more than one Coast Guard unit in a NMC status.

10. At the start of this year, the Omicron variant of the COVID-19 virus became the predominant variant in the United States and the number of Americans infected with COVID-19 increased dramatically. During the peak in early January 2022, the Center for Disease Control and Preventing (“CDC”) reported 1,263,230 new COVID-19 cases on January 10, 2022, more than four times higher than the previous highest daily total.⁵ The Coast Guard also felt the impact of the Omicron variant experiencing its peak operational impact the following day, with thirteen Coast Guard units NMC. The impact, however, quickly dropped and by the end of the month just one unit was NMC. On February 14, 2022, zero Coast Guard units were NMC and remained at zero for months. As a result, the Coast Guard no longer finds it necessary to track this metric. While the impacts to operational readiness at the peak of the Omicron variant were significant,

⁵ See CDC, COVID Data Tracker (last accessed August 29, 2022), https://covid.cdc.gov/covid-data-tracker/#trends_dailycases_select_00.

they are not as severe as the previous high from November 2020 (seven to fourteen NMC units per day throughout the month). The November 2020 high occurred before vaccines were available, but also at a time when the nationwide total of new daily cases nationwide was less than a quarter the number of cases experienced during the Omicron variant peak. Based on this prior experience, the Coast Guard would have expected a much higher number of NMC units if our service members remained unvaccinated. This is a clear indication that vaccination had a positive impact on Coast Guard mission readiness.

11. Individual readiness is the key building block for unit readiness. Vaccination remains the best method for an individual Coast Guard member to protect himself and his shipmates from severe disease, hospitalization, and death.

I hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge and information.

Dated: August 30, 2022



JOEL A. ABER
Lieutenant Commander
U.S. Coast Guard